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SUSAN Y. SDONG  
CLERK, US DISTRICT COURT  
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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
11

12 UNITED STATES OF AMERICA, ) Case Number: 3:14-CR-00102-CRB  
13 Plaintiff, )  
14 vs. ) FIRST AMENDED DECLARATION OF  
15 IAN FURMINGER, ) IAN FURMINGER IN SUPPORT OF  
16 Defendant. ) MOTION UNDER 28 U.S.C. SECTION  
17 ) 2255 TO VACATE, SET ASIDE OR  
18 ) CORRECT SENTENCE BY A PERSON IN  
19 ) FEDERAL CUSTODY  
20 )  
21 )  
22 )

23 I, IAN FURMINGER, declare as follows:  
24

25 1. I am currently under custody of the Bureau of Prison  
26 serving out a 41-month sentence which was reduced due to my  
27 successful completion of the Residential Drug Abuse Program  
28 (RDAP) program. I have a remaining three years of probation.

1        2.    At trial, I was represented by Brian Getz and John  
2 Paul Passiglia.    I was found not guilty of six of the ten  
3 charges alleged in the indictment, but was convicted of four  
4 other counts:    Count One - Wire Fraud, in violation of 18 U.S.C.  
5 Section 13431; Count Two - Wire Fraud, in violation of 18 U.S.C.  
6 Section 1343; Count Five - Conspiracy against Civil Rights in  
7 violation of 18 U.S.C. Section 241; and Count Six - Conspiracy  
8 to Commit Theft Concerning a Federally Funded Program, in  
9 violation of 18 U.S.C. Section 371.

10       3.    In my 20 year-career working as a police officer in  
11 high-crime neighborhoods, I testified at hundreds of preliminary  
12 hearings, motions to suppress evidence or to revoke probation,  
13 trial and other evidentiary hearings.    Based on my experience, I  
14 wanted to testify on my own behalf at trial. My desire to  
15 testify put Mr. Getz and myself in direct conflict with one  
16 another and led to irreconcilable differences on how to proceed  
17 with my case.    Every desire to testify on my own behalf was met  
18 with his response of: "The Government does not have a case  
19 against you."

20  
21       4.    Pretrial meetings with Mr. Getz often involved lunches  
22 where he ordered alcohol to drink and offered me drinks knowing  
23 I was struggling with a significant alcohol problem. On numerous  
24 occasions throughout the trial, I informed Mr. Getz that I  
25 wanted to testify in my own defense.    Mr. Getz did not want me  
26 to testify.    My desire to testify put Mr. Getz and myself in  
27 direct conflict with one another.    Every suggestion to testify  
28 on my own behalf was met with his response of: "The Government

1 does not have a case against you." Mr. Getz treated me more as  
2 a "buddy" than as a client facing serious criminal charges. My  
3 struggle with alcoholism and Post Traumatic Stress Syndrome  
4 (PTSD), was never brought in as a defense to explain oversight  
5 or possible neglect of my duties, rather than a deliberate act  
6 to play a part in the "scheme" of what transpired.

7 5. During trial, my attorney ignored my request to  
8 testify, and ignored evidence I brought to his attention. He  
9 also did not give me advice, or confer with me as events  
10 unfolded. Much of the testimony that took place and led to the  
11 jury's perception that I was part of a "scheme" could have been  
12 explained by my testimony as well as witnesses who were not  
13 called on my behalf that could have corroborated my testimony.  
14 Mr. Getz assured me that he knew what he was doing and told me  
15 that I did not need to testify because I would never be  
16 convicted based on the Government's evidence. He also threatened  
17 that he would not put on a defense if I testified and that if I  
18 testified, it would confuse the jurors as to the theory of his  
19 case.  
20

21 6. Mr. Getz was assisted in the case by attorney John  
22 Paul Passaglia. I was never informed that Mr. Passaglia would  
23 present any closing arguments to the jury. Mr. Passaglia's  
24 closing arguments demonstrated nothing less than his lack of  
25 knowledge in my case. Getz as the lead attorney failed to  
26 present a clear closing argument based on evidence solely  
27 against me in this case.  
28

1       7. In the midst of a very contentious divorce and child  
2 custody battle, Mr. Getz called my estranged wife as a witness  
3 at trial to speak to our financial condition in 2008. My  
4 financial situation was very important, since I was accused of  
5 the same theft that my two subordinates were charged with.  
6 Robles' poor financial condition became relevant at trial to  
7 explain motive. I felt it was important to show I did not have  
8 any financial problems, and therefore would have had no motive  
9 to commit crimes for gain while employed as an officer. In  
10 2008, I had an income of \$558,000. This was based upon \$196,000  
11 in salary and overtime and a \$360,000 profit on the last house I  
12 remodeled and sold. During her testimony, my then estranged  
13 wife, Stephanie, told the jury I made \$120,000 in 2008, which  
14 was misinformation. When asked how she knew by the prosecutor,  
15 she said she looked at my tax return. I wanted to testify and  
16 show my tax return from 2008 showing income of \$558,000. I had  
17 my tax return with me and Getz knew about. I motioned and sent  
18 notes to Getz to object as he was aware of my income. Getz did  
19 not object. The jury never heard any evidence about the  
20 undisputed facts of actual amount of money I earned in 2008.

21       8. Reynaldo Vargas admitted to the crimes and agreed to  
22 testify for the prosecution in exchange for a promise of a  
23 lenient sentence. Vargas' partner, Edmond Robles, had a  
24 significant amount of incriminating evidence connecting him to  
25 the scheme with Vargas. Vargas testified in detail to Robles'  
26 involvement, and Robles corroborated Vargas' testimony by his  
27 own actions. I owed no money outside of my home mortgage. Mr.  
28 Getz advised me not to testify. Had I testified, I could have

1 explained my financial situation as well as the surrounding  
2 evidence regarding my accusations in the crimes of theft, which  
3 I was found not guilty of.

4 9.If I had testified, I could have been able to tell the  
5 jury I was not part of the conspiracy and that I had no  
6 knowledge of Robles' and Vargas' scheme. In fact, when I  
7 ultimately discovered that Vargas had some questionable  
8 involvement with informants Bram and Walsh, I ordered him not to  
9 work with them. I submitted a memorandum to the San Francisco  
10 Police Department, Management Control Division (which was  
11 renamed before trial, as the Internal Affairs Department) to  
12 open an investigation. In addition, the Police Department never  
13 formally interviewed me regarding my memorandum or the  
14 relationship of Vargas to Bram and Walsh. The jury never heard  
15 any of this evidence, which I would have offered in great detail  
16 through my testimony. I would also have testified that I had no  
17 knowledge that Vargas was stealing drugs, or that he was giving  
18 drugs away to informants to sell to third parties.

19 10.This was also proven by the fact that I had the  
20 informants, Jayme Walsh and Daisy Bram arrested. This included  
21 separate arrests on two different days for selling the same  
22 marijuana. Walsh and Bram later said this marijuana was  
23 furnished to them by Vargas. When I learned that Vargas was  
24 working with the informants, Daisy Bram and Jayme Walsh, I  
25 turned them in by submitted a written memorandum the next day to  
26 start the investigation. I did this in conformance with SFPD  
27 procedures. This information was critical to my defense. I  
28

1 would have testified about all the details at trial. I would  
2 have explained the mechanics of this in my testimony.

3 11.The conspiracy to violate civil rights was derived from  
4 the theft Vargas committed at the storage locker. The  
5 conspiracy to commit theft from a government funded program  
6 because San Francisco Police receives grant money. I could and  
7 would have explained all of this if I had not followed my  
8 attorney's instructions not to testify.

9 12.The government argued at trial that I did nothing to  
10 stop Vargas and Robles illegal activities. During the  
11 sentencing hearing, Judge Breyer also said I did nothing to stop  
12 their activity. This is not true. Had I testified, I would  
13 have testified that I was included in a late-night phone call  
14 Vargas had with informants Bram and Walsh where they threatened  
15 to extort or kill Vargas. This was approximately two months  
16 after I ordered Vargas and Robles not to work with them. I  
17 documented and reported this phone call and the threats to the  
18 Internal Affairs Division. Vargas was interviewed by Internal  
19 Affairs. Internal Affairs concluded Vargas was lying and ended  
20 the investigation. I was never interviewed, even though I was  
21 the one who started the investigation. Furthermore, two  
22 officers, David Brandt and Sean Dougherty, arrested Bram and  
23 Walsh on two separate days. They called me for advice because  
24 one of those arrested had my business card. I told the officers  
25 to arrest Bram and Walsh. I would have testified that if I had  
26 known they had received the marijuana from Vargas, that having  
27  
28

1 them arrested would make me guilty of the same offense and add  
2 me to the conspiracy that I did not know existed.

3 13. My testimony would have shown that I had no knowledge of  
4 the involvement with Vargas, Bram, and Walsh, other than when I  
5 ordered Vargas and Robles not to work with them anymore. In  
6 addition, Vargas and Robles went to visit Bram and Walsh after  
7 the Golden Gate Park arrest by Officers Dougherty and Brandt. I  
8 was never aware that a meeting between Bram and Walsh (the  
9 informants) and Robles and Vargas took place, which would have  
10 proved that Vargas and Robles were involved in the scheme  
11 together without my knowledge.

12 14. At trial, Officer Vargas testified that he gave me money  
13 that he took from a storage locker search on 19<sup>th</sup> Avenue. This  
14 did not happen. Evidence was presented at trial that I  
15 responded to that arrest while off duty. The government argued  
16 that I came in off-duty to further the "scheme". When I found  
17 out it was not a substantial arrest requiring my presence, I  
18 left the storage locker at 19<sup>th</sup> Avenue. I would have testified  
19 that I was unaware of any scheme. I worked different days and  
20 shifts so that we had full coverage on all days, and I split my  
21 shifts to supervise and oversee operations. Had I testified, I  
22 would have contradicted Vargas' testimony that I changed my  
23 shift to work with him and Robles. I would have testified that  
24 I changed my shift to work with others on my team and that I was  
25 not aware of any "scheme".  
26

27 15. Part of my duties as a sergeant was to review reports  
28 for accuracy and to ensure that all the relevant crime elements

1 were reflected in the report. I would have testified that I  
2 regularly signed and faxed reports, including many of arrests or  
3 investigations I did not participate in or attend. It is the  
4 practice of the SFPD that sergeants not necessarily attend all  
5 arrests or search warrants for which they sign off on.

6 16.Captain Tacchini was willing to testify that I came in  
7 off duty under his direction for significant arrests. Captain  
8 Tacchini was never called to testify. The jury did not get to  
9 hear testimony from Captain Tacchini that responding to my team  
10 and being present for significant arrest while off-duty was a  
11 necessary party of my job. The jury, with no further  
12 information presented to them, found me guilty of wire fraud for  
13 responding to Vargas' test to come to the storage locker.

14 17.Officer Reynaldo Vargas had a history of corruption and  
15 dishonesty in the department. Officer Candette Hilder was the  
16 officer who discovered Vargas had submitted thousands of dollars  
17 in fraudulent overtime cards. I asked Mr. Getz to call Officer  
18 Hilder as a witness to show Vargas' prior history of dishonesty  
19 and corruption. Officer Hilder was never called to testify and  
20 the jury never heard this evidence because of Vargas' guilty  
21 plea.  
22

23 18.Vargas testified that he stole \$30,000 while executing a  
24 search warrant in Newark, California on 5/29/2009. He further  
25 testified he gave me \$10,000 and that I purchased skylights for  
26 my home with that money. Had I testified, I would have  
27 explained prior to the alleged theft taking place in Newark, I  
28 purchased the skylights for my home from Eric Ryner at Bay Area



1 Windows in Lafayette, California on 5/6/2009 (prior to the  
2 alleged theft) and installed them with my helper, Ignacio  
3 Ramirez. Had I testified, both Eric Ryner and Ignacio Ramirez  
4 could have been called to corroborate my testimony as to the  
5 time in which the skylights were bought and installed. (See  
6 Exhibit A - Declaration from Eric Ryner and Invoice for purchase  
7 of skylights on 5/6/2009). The jury never heard this evidence.

8 19.Vargas testified to a theft at the Sunrise Hotel where  
9 Robles stole money. He said Robles split the money he found  
10 with us. That did not happen. I would have testified to that.  
11 In the same testimony, Vargas testified that it was not  
12 Furminger but Sergeant Bueno who signed the police report. Mr.  
13 Getz knew about this report. We knew it was signed by Sergeant  
14 Bueno, but nothing was said to the jury to clarify whose  
15 signature was on the report. This was my conviction for Count 2  
16 Wire Fraud and prejudiced me to the jury on the remaining three  
17 convictions.  
18

19 21.On November 28th, 2009 I was in a serious off duty  
20 motorcycle accident. I was off work for three months to  
21 recover. I would have testified that when I returned to work, my  
22 new captain, Captain Coralles, told me he would add a sergeant  
23 to plain clothes to assist me. I had decided to quit plain  
24 clothes and go back to uniform patrol. I did this because I had  
25 asked for help in the past and was denied. I reported possible  
26 corruption involving informants Daisy Bram and Jayme Walsh with  
27 Officer Reynaldo Vargas, an investigation that the department  
28

1 vacated before it even started. I was never interviewed  
2 regarding my complaint. I wanted Captain Corrales to corroborate  
3 that I quit out of frustration over my ignored efforts to try  
4 and improve the team with more supervision. When Captain  
5 Corrales took over as commanding officer, he saw the need to do  
6 just that. I left Mission Station two months later for  
7 Tenderloin on an officer request transfer.

8 22. On May 17th 2011 I prepared a memorandum to change the  
9 policy on property processing of arrested persons. I wanted to  
10 testify that I believed that the policy in place did not protect  
11 the citizens' property nor did it protect the officers from  
12 liability. I wanted to change the property receipt process where  
13 the suspect is given an inventory sheet of property while he is  
14 on scene. The current policy does not protect the citizen or the  
15 officer or prevent officers from helping themselves to the  
16 property of others, if that were to happen. This policy change  
17 was denied by the San Francisco Command Staff. Since this case  
18 involved the stealing of citizens' property, I wanted the jury  
19 to see, prior to indictment or investigation, I filed this  
20 request to improve the department and protect everyone involved.  
21 (Copy of memorandum and denial memorandum attached). I would  
22 also testify that I was never interviewed further about my  
23 recommendation prior to it being denied.

24 23. On April 14, 2017, I made an appointment to meet with  
25 Mr. Getz to get a declaration from him regarding his failure to  
26 properly represent me and not allowing me to testify at trial  
27 based upon his belief the government had no case against me. Mr.  
28

1 Getz said he had just got off a long trial and had little to no  
2 recollection of my trial and could not give me a declaration.

3 I declare under penalty of perjury under the laws of the  
4 United States that the foregoing is true and correct and  
5 that this declaration was executed on April 20<sup>th</sup>, 2017.  
6

7  
8 Signature: IAN FURMINGER

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